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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/862,869	05/22/2001	Nobuhiko Honma	AA472	1083

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EXAMINER	
EINSMANN, MARGARET V	

ART UNIT	PAPER NUMBER
1751	

DATE MAILED: 09/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/862,869	HONMA ET AL.	
	Examiner	Art Unit	
	Margaret Einsmann	1751	

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on *03 August 2004*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☐ Claim(s) *1-39* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☐ Claim(s) *1-39* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 8/3/04 has been entered.

Applicant's amendments have been entered and applicant's remarks carefully considered. The rejections of record are maintained.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a

person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-4, 6-10, 12-16, 18-22, 24-32, 34-39 are rejected under 35 U.S.C. 102(b) an anticipated or alternatively under 103(a) as being unpatentable over Florman et al, How to Clean Practically Anything.

Each of the steps in each of the claims is notoriously well known. In the fabric care industry, each fabric care product marketed comes with a label giving instructions for use. See Tide, Bounce, Downy packages or the web site for Ultra Liquid laundry Detergent included with this action. Regarding a prespotting composition, its very name denotes how it is used without further instructions. Anyone who does not know that it is used to treat a garment before placing the garment in the washing machine with a detergent composition will certainly know that it is used in conjunction with the post-use of a detergent composition which is used in a washing machine or by hand. In a similar manner, if one does not know that a dryer sheet is used in a clothes dryer in conjunction with a load of clothes that has previously been washed in a washing machine or by hand with a detergent, one can find that information on the label. See for example the label on Bounce towels. Regarding a liquid fabric softener, the package invariably contains directions to add to the final rinse, which assumes that it is being added to a washing machine after the clothes have been washed by a detergent. No other instructions are necessary. Instructions for the use of another fabric care product in conjunction with a detergent not necessary because each of the fabric care compositions comes with its own instructions and methods of use. Beginning on page 81, Florman et al. teach conventional ways to cope with a pile of dirty laundry. In fact

they disclose the rankings of several fabric care products in the subsequent pages. Under "Recommendations" on page 82 and following, Florman gives recommendations for use of bleaches, boosters (spotting agents) in the form of powders, sprays, liquids and sticks. The information on pages 83-84 discloses the effectiveness of using the boosters along with detergent compositions. Anyone who has done a home laundering knows that all of these products are used prior to placing the fabric articles in a washing machine comprising a detergent. Application methods of the boosters are discussed on page 84 under "Convenience." Detergents are discussed at page 95 et seq. Again stain removal is discussed. Under Ink, motor oil on page 96, Florman states, "However, results improve remarkably if you use certain detergent boosters before laundering." On page 110, under "Effectiveness" Florman discusses the use of fabric softeners, stating, "Add rinse liquids at the beginning of the final rinse (after a wash with a no-extras detergent), and toss the dryer sheets into the dryer with the wet laundry." Accordingly these methods of use of conventional fabric conditioners are so notoriously well known that no instructions are needed on the packaging. On page 111, Florman states, "If whiter whites and brighter brights are important to you, use a detergent with good brightening ability before you use a softener." Florman et al anticipates the methods of providing fabric treatment compositions claimed in the instant claims by providing detergent compositions and fabric care compositions comprising fabric conditioning compositions, dryer sheets, pretreatment compositions and other conventional laundry treatment compositions, and instructions for using them together, for example, the prespotters (boosters) before washing with a detergent, bleach before or simultaneously

with a detergent, and fabric softeners in the form of dryer sheets in the dryer subsequently to washing with a detergent or liquid softeners added to the final rinse of a wash. Florman et al. additionally discusses the order of using each composition, which is not their invention, but is well known. Accordingly there is nothing inventive in using said fabric care products, the order in which they are used, or in providing instructions for using them in sequence.

The claims are obvious variants of the teachings in Florman et al. when they are interpreted as a method of selling a combination of products in a kit. Florman teaches the sequence in which these products are used. It is not inventive to sell products known to be used in sequence, with instructions to use them in sequence. It is giving the consumer information which is in the public domain. A prespotter will always be used before a detergent, and a dryer sheet or liquid conditioner will be used after the fabrics are clean from being washed with a detergent. Regarding the claims to providing personalized instructions, it is not clear how one gives personalized instructions except as is given in Florman for the removal of specific contaminants from fabrics (See page 96). A method of removing a specific stain is akin to a personalized instruction since is a variant of fabric care instructions in response to an individualized need. Florman provides such personalized instructions.

Claims 5,11,17,23 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Florman et al. in view of Yourick, US 4,775,935 or Dedrick, 5,710,884. Florman et al. is applied as set forth in the above rejections. They do not,

however, teach a method of providing a personalized profile and giving instructions consistent therewith. Both Katz and Dedrick et al. disclose the use of a computer to gather and store information to provide a personal profile. It would have been obvious to the skilled artisan to use the method of Katz or Dedrick to collect information to create a personal profile by monitoring a consumer's habits and needs as disclosed by either Katz or Dedrick et al., and from the information provided, provide personalized instructions on cleaning any stain or garment type from data stored in a computer. Noting the website included, www.laundry-alternative.com, conventional alternative methods of cleaning stains is already available on line as well as being available in Florman et al.

Response to Amendment and Argument

Applicant's arguments regarding the Florman reference have been fully considered but they are not persuasive. Applicant's arguments state that the Florman reference does not teach the newly added limitation to the independent claims, which states that the compositions must contain one or more coordinated elements selected from a Markush group. Included in the Markush group is "a characteristic ingredient" Note Florman's statement on page 83, second paragraph under "BOOSTERS" which states, "They may contain many of the same ingredients as detergents: surfactants, or cleaning agents; enzymes; water-softening "builders"; fluorescent dyes: an so forth. The powders include all-fabric bleach." This statement reveals that boosters and detergents do generally contain the same characteristic ingredients. (This section of the rejection is

maintained and applied to claims 13 and 34 and their dependent claims, wherein the term "characteristic ingredient was not canceled.)

Florman also states at page 97 under "PRICES:" You don't have to pay extra for performance. Indeed, there is little correlation between price and cleaning ability. You pay more for the convenience of liquid or measured packets. .... You can save the most money by forgetting brand loyalty: Clip coupons and stock up on whatever satisfactory product is on sale." This statement is directed to those who are loyal to a particular brand, inferring that most consumers are loyal to brand names, trade dress and container graphics, etc and will use all fabric care products from the same manufacturer when they find a product that is successful in the laundry. Alternatively, those consumers eager to save money, will choose all of those products which have container graphics indicating that the product is a bargain. Accordingly, since the majority of consumers are brand-loyal the claimed subject matter is not novel or unobvious. Lastly, Florman states on page 97 next to last paragraph, "If you suffer from allergies or sensitive skin, consider a detergent without enzymes or perfumes, the most likely sources of irritation." Accordingly, a consumer with allergies looks for all fabric care products which state that they are allergy-free.

Applicant argues that while consumers are loyal to brand names, there is no disclosure in Florman that consumers purchase and/or use products whereby elements such as brand name, container graphics, containers, the dosage per container, a dye, a perfume, a trade dress, and combinations thereof are coordinated. Applicant states that while consumers are loyal, they will use All and Snuggle, which are produced by

Unilever, and are well known. Applicant has not argued that most consumers who have sensitive skin will use all compositions which state that they contain no enzyme or perfumes and are allergy-free, and that most consumers who are eager to save money look for container graphics which indicate that the product is a bargain. Additionally, the examiner notes that mothers of newborns will only use products which contain graphics indicating that the products are formulated especially for babies. Applicant states that since Florman teaches that one could save by forgetting brand loyalty he teaches away from the present invention. On the contrary, that paragraph is based on the well known fact that most consumers are loyal to a brand and need to be told how to save money. Florman teaches that most people do not forget brand names.

For the above reasons, the rejections based on Florman are maintained.

All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing of a request for continued examination and the submission under 37 CFR 1.114. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Margaret Einsmann whose telephone number is 571-272-1314. The examiner can normally be reached on 7:00 AM -4:30 PM M-Th and alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on 571-272-1316. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9306 for regular communications and (703) 872-9306 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 571-272-0994.

Margaret Einsmann
Primary Examiner
Art Unit 1751

September 22, 2004